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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09.679.646	10-05/2000	Stephen Bloomfield	P06892US00:LRP	8442

881 7590 06/23/2003

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EXAMINER

MANOHARAN, VIRGINIA

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 06/23/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/679,646

Applicant(s)

BLOOMFIELD ET AL.

Examiner

Virginia Manoharan

Art Unit

1764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 6 and 8-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 6 and 8-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

Claims 1, 6, 8-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. The process limitations recited prior the "said process comprising the following steps" provides for ambiguity and confusion as they are limitations not found in the body of the claims but are important to applicants' invention? Note e.g., page 2, lines 20-24 of the specification. Reciting ---the distillation column and the falling film evaporator constitute two distinct pieces of equipment which are easy to dismantle and to transport separated by the distributor, and in which the distillation column is assembled on top of the falling film evaporator---after step (e) as a wherein clause in the body of the claim 1; and deleting lines 4-6 in the preamble the phrase "comprising a distillation step in a distillation column followed by an evaporation step in a falling film evaporator" would obviate the above rejection.

b. In claim 8, line 1, the claimed "claim -41" is not understood.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB(590,439) in view of EP '107.

The above references are applied for the same combined reasons as set forth at page 4 of the previous Office action. Note specifically page 1, lines 74-83; page 2, lines 2-116 and page 4, lines 81-95 of the GB 439 reference.

Claims 8 and 12-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's arguments filed April 9, 2003 have been fully considered but they are not persuasive. Applicants' following arguments such as:

"..GB '439 is directed to introducing a vapor into a distillation column..... "passing the hydrogen peroxide vapor from the separator to a fractionating column where it is subjected to a fractional distillation", whereas, in claim 1 (currently amended), a diluted solution is fed into the distillation column...

...In addition, GB '439 clearly teaches a climbing film evaporator is used .... whereas in claim 1 (currently amended), a "falling " film evaporator is used..." are not persuasive of patentability for the following reasons:

Whether it is the solution, as claimed ,or a vapor, as in the prior art, is being processed is of no patentable moment. The same hydrogen peroxide material is being processed. Nonetheless, by now it is well settled that the material or fluid-in-process may be new or unobvious, however a product or material-in-process does not impart patentability to the process of GB' 439. See In re Durden 226 USPQ 359. Furthermore, the same result is achieved whether the evaporator used is of the falling -film- type evaporator ,as claimed, or a climbing -film type as in the prior art.

An artisan knows that the flow of fluid in film could either be up or down. This is recognized by applicants. Note e.g., page 5, lines 2-26 of the specification which recites that the flow of the heating medium and the flow of vapor arising from the solution may either be flowing down or up.

Moreover, the argument that in GB '439, the distillation column is not assembled on top of the evaporator ... as is recited in claims 1 (currently amended) is not considered well- taken. The above limitation is not in the body of the claim, but is recited in the preamble which may or may not even be given patentable weight.

Thus, in the absence of anything which may be "new" or "unexpected result", a prima facie case of obviousness has been reasonably established by the art and has not been rebutted.

Unexpected results must be established by factual evidence. Mere arguments or conclusory statements in the specification, applicants' amendments, or the Brief do not suffice. In re Linder, 457 F.2d 506, 508, 173 USPQ 356, 358 (CCPA 1972). In re Wood, 582, F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978).

The arguments with regards to Schneider is moot . This alternative reference has been dropped from the above rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action

Any inquiry concerning this communication or earlier communications from the examiner should be directed to V. Manoharan whose telephone number is (703) 308-3844. The examiner can normally be reached on Tuesday--Friday from 7:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (703) 308-6824. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9311 for regular communications and (703) 308-0651 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

V. Manoharan/dh  
June 20, 2003

*Subj: 7/10*  
*6/20/03*